

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN A JOHNSON, No C-09-0948 VRW (PR)  
Petitioner,  
v  
RICHARD J HAUGNER et al, ORDER OF DISMISSAL  
Respondent(s).

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Petitioner, a state prisoner incarcerated at California State Prison in Corcoran, California, has filed a pro se action challenging his "unauthorized adjudication as a 'habitual criminal'" under the California Three Strikes Law. Although petitioner identifies the pleading as a petition for an "auxiliary writ" under 28 USC §§ 1651 & 2241, given the allegations contained therein the court construes it as a second or successive petition for a writ of habeas corpus under 28 USC § 2254. His first 28 USC § 2254 petition was denied on the merits by this court on July 29, 2005. See Johnson v Pliler, No C 01-0547 VRW (PR), Doc #54.

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1 A second or successive petition may not be filed in the  
2 district court unless the petitioner first obtains from the  
3 appropriate federal court of appeals an order authorizing the  
4 district court to consider the petition. 28 USC § 2244(b)(3)(A).  
5 Petitioner has not obtained an order from the Ninth Circuit  
6 authorizing this court to consider his current petition.  
7 Accordingly, the petition is DISMISSED without prejudice subject to  
8 refiling if petitioner obtains the necessary order.

9 The clerk shall close the file and terminate any pending  
10 motions as moot.

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12 IT IS SO ORDERED.

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15 VAUGHN R WALKER  
16 United States District Chief Judge  
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